

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
(March 31, 1999 Session)

GREGORY CHILDRESS,	)	DAVIDSON CHANCERY
	)	
Plaintiff-Appellant,	)	Hon. Ellen Hobbs Lyle,
	)	Chancellor.
VS.	)	
	)	
WINSETT-SIMMONDS,	)	No.M1997-00164-SC-WCM-CV
INC. and USF&G	)	
INSURANCE COMPANY, )	)	
	)	
Defendant-Appellees. )	)	

For Appellant:

For Appellee:

Terry R. Clayton  
Nashville, Tennessee

Blakeley D. Matthews  
Cornelius & Collins  
Nashville, Tennessee

MEMORANDUM OPINION

Mailed - September 9, 1999

Filed - January 11, 2001

Members of Panel:

Frank F. Drowota, III, Associate Justice  
Thomas W. Brothers, Special Judge  
Joe C. Loser, Jr., Special Judge

AFFIRMED

Brothers, Judge

## MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. §50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The appellant-employee argues that the employee proved by a preponderance of the evidence that he sustained a work-related injury which caused him permanent injury. The employee also argues that the trial court erred by ordering the appellant to pay the cost of the entire transcript. The employer argues that the trial court erred in not allowing the employer to be reimbursed for previously paid workers' compensation benefits. The employer also argues that the trial court was correct in its determination of what items were to be included in the appellate court record. As discussed below, the panel has concluded that the trial court should be affirmed on all points.

The question of whether the evidence proved by a preponderance of the evidence that the employee sustained a work-related injury which caused him permanent injury is a question of fact, and review is therefore *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2).

Plaintiff alleged that a work-related fall occurred on November 7, 1994 while he installed cable in the employ of Winsett-Simmonds Inc. The defendants initially accepted Plaintiff's accident as a compensable occurrence and began paying medical and disability benefits, but they did dispute the extent of Plaintiff's claimed injuries. The crux of this dispute was whether Plaintiff's initial fall caused P's herniated disc, which was discovered fourteen months after the fall. At trial, Defendants sought reimbursement for medical expenses, temporary disability benefits ordered by Chancellor C.K. Smith (sitting by interchange), temporary disability benefits paid while the Plaintiff was working for other employers, and temporary benefits inconsistent with Dr. Lawrence's recommendations.

At the conclusion of trial, the trial court found that Plaintiff failed to carry his burden of proof as to causation of permanent injuries or impairment resulting from the November 7, 1994 fall. Also, the trial court found that Defendants were not entitled to reimbursement of previously paid workers' compensation benefits. Therefore, the court dismissed Plaintiff's claims for further workers' compensation benefits and denied Defendants' motion for reimbursement.

Having considered the record and the arguments made on appeal, we agree that Childress did not carry the burden of proof on the issue of whether Childress sustained a work-related injury which causes him permanent injury. Both Dr. Lawrence and Dr. McComb gave expert medical testimony relating Plaintiff's herniated disc to other events and activities, none of which were the November 7, 1994 fall. Based on this, we affirm the trial court's ruling that Childress did not carry the burden of proof on this issue.

Second, the trial court's decision to require Plaintiff to bear the expense of furnishing the entire transcript was proper. The trial court determined that Plaintiff tried to limit the appellate record in an attempt to try to keep the record on appeal from being a fair and accurate account of the trial court's actions. We believe that the trial court properly acted within the guidelines of Rule 24, TRAP, in determining how to correct and modify the record on appeal by ordering that the entire transcript be filed and that Plaintiff bear this cost after having attempted to obfuscate the record on appeal. Therefore, we affirm the trial court's ruling on this issue.

Third, the trial court was correct in not awarding the employer a reimbursement of previously paid workers' compensation benefits. The employer argues that Tenn.Code Ann. §50-6-205(d)(2) entitles the employer to a reimbursement for the previously paid workers' compensation benefits. A reading of Tenn.Code Ann. §50-6-205(d)(2) makes clear that this code section does not support the employer's argument. Tenn.Code Ann. §50-6-205(d)(2) states that when an employer has made payments prior to a court determining an award, "In such cases the prior payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payment." This section merely states that if an employer makes payments to an injured employee before a court makes an award, that does not mean the court will compel the employer to continue those payments. This statute does not provide any authority for the argument that an employer can, or should, recover voluntary payments

made to an employee before a court makes an award. These payments are gratuities which “did not relieve the employer of [its] statutory liability to the employee...” and were not payments “to an employee made after judgment ‘pending the outcome of...appeal.’ ” *Hartford Accident & Indemnity Co. v. Hay, 17 S.W.2d 904(Tenn. 1929)*.

Fourth, and finally, we find that the trial court was correct in determining what the record on appeal would contain.

For the above reasons, the judgment of the trial court is affirmed. Costs on appeal are taxed to the plaintiff-appellant.

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Thomas W. Brothers, Special Judge

CONCUR:

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Frank F. Drowota, III, Associate Justice

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Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

GREGORY CHILDRESS,	)	DAVIDSON CHANCERY
	)	NO. 95-3734-III
PLAINTIFF/APPELLANT,	)	
	)	HON. ELLEN HOBBS LYLE,
v.	)	CHANCELLOR
	)	
WINSETT-SIMMONDS, INC. AND	)	NO. M1997-00164-SC-WCM-CV
USF&G INSURANCE COMPANY,	)	
	)	
DEFENDANT/APPELLEES.	)	AFFIRMED

**JUDGMENT**

Filed - January 11, 2001

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Plaintiff-Appellant, Gregory Childress, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

DROWOTA, J. NOT PARTICIPATING